

**Before the
Federal Communications Commission
Washington DC 20554**

In the Matter of:

Schools and Libraries Universal Service)
Support Mechanism – Second Further) CC Docket No. 02-6
Notice of Proposed Rulemaking)
)

**Comments of the Alaska Department of Education and Early Development/ Alaska State
Library**

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INTRODUCTION

The Alaska Department of Education and Early Development and State Library (EED) appreciates the opportunity to comment on the December 23, 2003 Second Further Notice of Proposed Rulemaking (NPRM), FCC 03-323 and thanks the Federal Communications Commission (FCC) for opening an avenue for including the applicant and service provider community in taking positive steps to streamline the program and address waste, fraud, and abuse issues. EED looks forward to future improvements to the E-rate program and offers these comments to support the FCC's effort to streamline processes and improve program oversight.

Since the inception of the E-Rate program, EED has funded and supported the efforts of our schools, libraries and service providers in Alaska to participate in the E-Rate process. We are aware, as you surely are, that the vast remoteness and harsh geography of our state necessitates electronic communication at the same time as it increases the costs of providing it. E-rate is an important program to help schools and libraries build technology infrastructure needed to increase access to educational resources. Our applicants are, indeed, grateful for all that E-Rate has provided in improving the telecommunications map of our state.

However, in our last Comments to the Second Report and Order and NPRM (Alaska Department of Education and Early Development - FCC 03-101 Comments, July 2003), we stated "...implementation of the new rules and definitions needs to be carefully crafted in order not to make the E-rate application process more burdensome and complex. With the high level of applicant frustration with the complexity of the E-rate process, continuous improvements are needed to make sure that all eligible schools are receiving benefits from E-rate. The process must be streamlined to ensure new applicants, small schools, and in particular, rural and poor schools are able to successfully navigate the E-rate application process. Increasing attention to program waste, fraud and abuse (WFA) challenges the program to develop effective oversight and enforcement rules that do not overburden the already frustrated applicants with more complexity."

It has been our experience that much of the implementation of the new rules issued in the Second Order has done precisely what we cautioned against. This further Notice, which raises additional questions as to the E-Rate community's perceptions of the value of the convoluted process and inordinate paperwork involved in the application and funding processes, gives the Commission an additional opportunity for simplifying the program which we hope will be acted upon.

65 **A. DISCOUNT MATRIX**

66 The commission seeks comment on the effectiveness and efficiency of the discount
67 matrix used to determine support payments for eligible applicants, in particular on
68 changing the matrix to adjust the levels of discounts received by schools and libraries. In
69 determining whether a change in the matrix would be helpful, it is necessary to first
70 determine where instances of waste, fraud and abuse most occur. A study by the State
71 Coordinators' E-Rate Alliance (SECA) mentioned in their filing on the previous NPRM
72 produced figures documenting that Priority 2 requests were far more likely to be found to
73 exceed program guidelines. Therefore it makes sense to concentrate efforts to correct the
74 problem in that area.

75
76 The discount matrix for the entire program does not need to be changed. In areas where
77 connectivity charges are high, applicants have made their technology goals assuming that
78 they will continue to be able to receive support for the connectivity that allows them to
79 utilize telecommunications and Internet to instruct and serve their clients. At a time when
80 state and local leaders are decrying the increasing difficulty of meeting the rising costs of
81 education, to further increase those costs by reducing discounts would be overly
82 burdensome.

83
84 Many applicants have purchased and installed, with or without E-Rate assistance,
85 equipment and systems to support instruction and public service. A reduction in the
86 discount matrix for Priority 1 connectivity might mean that this infrastructure and
87 equipment could not be used as planned for. While this reduction in Priority 1 support
88 might encourage some applicants to scale back their requests to what is needful, it also
89 will trip up all of those applicants who already have made wise and frugal decisions
90 about what is needed to reach their technological goals. They too will have to make cuts
91 in their services if they cannot re-budget for the higher amounts they would have to pay.
92 Cuts in support for Priority 1 requests can actually mean a reduction in presently
93 successful programs.

94
95
96 The Commission asks whether developing a separate discount matrix for Priority 2
97 funding would effectively address issues of waste, fraud and abuse. Since funding for
98 Priority 1 requests already meets all eligible requests throughout the entire matrix,
99 changes should be restricted to the Priority 2 requests – in effect making a separate
100 matrix for Priority 2. This would seem the simplest method for driving funding lower in
101 the discount levels. An overwhelming percentage of the schools and libraries in the
102 country have installed at least some kind of equipment and made connections to the
103 larger world of the Internet. While many of these applicants would like to upgrade,
104 improve and modernize the installation they are currently working with, asking that they
105 either wait a year or so, or come up with additional funds of their own is not overly
106 demanding. They could choose to continue the program under which they are currently
107 operating until they can afford to apply for the upgrades.

109 The Commission's action of the Second Order setting up regulations to allow Priority 2
110 funding for an eligible service twice in five years may at some future time improve the
111 distribution of funds further through the discount levels. However, any effects from this
112 change are a long time in the future. Immediately changing the top discount level of the
113 Priority 2 requests will very quickly impact funding. The suggestions of either the USAC
114 Waste, Fraud and Abuse Task Force or the SECA group should be looked at closely in
115 making this decision.

116
117 The Commission seeks comment on how to transition to the new discount matrix.
118 Funding requests, including appeals, received on or before the close of the Form 471
119 filing window for Year Seven - February 6, 2004 - should receive the appropriate
120 discount for funded internal connection services for the life of the contract. For
121 administrative ease, the discount rate committed the applicant for Priority One services
122 should be used for continuation of multi-year contracts that secured funding during Year
123 Seven or before. Applicants that did not request internal connection funding for multi-
124 year contracts during Year Seven or before may receive discounts according to the new
125 discount matrix. Because this regulation is proposed to take effect with the 2005 funding
126 year, also known as Year Eight, applicants will not have the opportunity to establish
127 multi-year contracts at high discount rates in anticipation of changes in regulation since
128 the funding window for Year Seven has closed. Therefore, timing of regulations reducing
129 the discount matrix will limit potential abuse.

B. COMPETITIVE BIDDING PROCESS

The Commission asks whether the 470 process results in competitive bids and for a description of those entities who do not usually get such bids. In rural Alaska, far too often, no service provider offers bids for requests listed on an applicant's 470. Even more than the remote school districts, the tiny public libraries in bush Alaska are likely not to hear from a single bidder after posting a 470. This comes as no surprise, of course. The costs of doing business in remote places is enormously high and the number of people reached with services is very small – providing very little incentive for build-out even to reach a customer who is supported by E-Rate. The additional business which might conceivably be the reward for the initial installation is too small to be worth the effort. It is almost unheard of for any applicant outside of Anchorage, Alaska's only urban area, to receive a bid on local phone service. Long distance and cellular service are likewise seldom ever matters of bidding. Internal Connections requests may, if the project is large enough, receive bids, but far more often, applicants must individually solicit vendor responses, totally separate from the 470 process. This is, of course, what would be required of any public entity even if E-Rate were not involved.

Applicants who are well aware there is only one provider available in the area have seven times dutifully filed a Form 470 for telecommunications services. They would appreciate the opportunity to simply extend their tariffed or month-to-month agreements with their current providers. This could be accomplished by modifying a Form 470 to allow a checkbox by the statement: "Requesting basic telephone services as supplied during the last program year". Directions could state that any service provider who wished to be considered for providing the services referred to would need to contact the applicant within 28 days of the filing date. Lack of any contact would allow the applicant to use the current provider at the current rates.

An even better solution would be to remove basic telecommunications from the 470 process altogether, by turning payments for phone services to schools and libraries over to USAC to administer on the same basis as the High Cost Fund as suggested in earlier filings to NPRMs by the Wisconsin Department of Public Instruction.

The Commission asks how it can ensure that applicants in these circumstances select cost effective services. A suggestion of a bright line rule is made. For many reasons, we feel that setting up yet one more database of limits would further exacerbate the already complex administration of this program. Insuring reasonable prices in the case of telecommunications is the province of the state public utility commissions. Limits set by the Commission would necessarily have to coordinate with state regulations, thus adding a degree of complexity and resulting in no change in prices. Single bids for Internet access in remote locations are frequently from the only provider in the area. In the case of only one provider available, while the charge may be higher than in other locations, the applicant has little recourse. Either they pay the going rate, or they do without Internet. Limits set by the Commission could easily result in no access for a school or library. In such remote situations, a price limit set by the Commission would probably have no

174 effect on a provider in persuading him to lower his price. Business models in remote
175 places involve a great deal more than the local E-Rate recipients.
176
177 The Commission's efforts to enforce price ceilings and funding limits on Priority 1
178 services would not only be administratively burdensome, to the point of futility, it very
179 well may be harmful to applicants and their programs. Priority 2 requests may be easier
180 to control using this mechanism, but given the new 2-in-5 regulations and especially if a
181 new discount matrix is adopted, it would seem prudent to wait until the results of these
182 actions play out before adopting yet another draconian measure to attempt a fix.

C. DEFINITION OF RURAL AREA

The Commission seeks comments on modifying the definition of rural area for schools and libraries. A multiplicity of suggested methods are listed as well as a request for a description of the effects of recommended changes, including whether current rural areas should be grandfathered.

The effects of any change in the definition are complicated and difficult to trace for anyone other than a statistician. The Pennsylvania Department of Education recently commissioned a study of the effects of the various methods of defining rural versus urban locations and has allowed other states access to their conclusions. The most immediate conclusion one can reach is that in any change, there will be some losers and some winners. Although the developers of the study conclude that the more narrowly one can limit the population of an area, the more fairly one can label it as either rural or urban, their conclusions mean little to a state where a single school district may encompass an area larger than the state of New Jersey and have fewer than 1000 students enrolled.

Alaska, on behalf of the other states and territories which have a large proportion of remote and isolated schools, would like to ask the Commission to keep in mind while resolving this re-definition that statistical solutions may not always be fair. Territory less than 100 miles from Fairbanks, Alaska, is absolutely more rural than territory less than 100 miles from Altoona, Pennsylvania. After adopting a new definition, the Commission should run the new designations through a filter for distance and isolation to see if the definition meets the test of common sense.

While the appropriate definition of rural area for schools and libraries is an important and useful metric in the current administration of the E-Rate program, one must ask whether, in the long term, it would not be better to directly measure the local costs of telecommunication services and equipment that the E-Rate program subsidizes at the necessary level of geographical granularity to establish accurate and fair discounts for individual schools and libraries.

214 **D. DEFINITION OF INTERNET ACCESS**

215 The Commission asks if the definition of Internet access in schools and libraries should
216 be changed to conform to the recently adopted definition for the Rural Health program. In
217 spite of some confusion on the part of USAC and FCC staffers as to exactly what the new
218 RH Internet definition means, we assume that it may indicate a willingness on the part of
219 the Commission to allow a broader list of eligible web provisions.

220
221 Rural Health applicants are now to be allowed to “generate, alter and interact” with
222 information. It is hard to imagine that students in E-Rate supported schools could not
223 benefit from the same capability. If students are allowed only the ability to download and
224 print out information found posted on the web, they may as well have been regulated to
225 print and film resources. The difference is in amount and ease of information access, not
226 in actual learning. Learning could almost be defined as “interacting with and altering
227 information so as to generate new ideas and products”.

228
229 The enormous increase of Distance Learning programs, using E-Rate supported
230 bandwidth, indicates that schools are already proceeding into the world of generating
231 information. These are no static “video classes” of previous years. Teachers and students
232 interact at a distance; students work collaboratively with others to originate new data that
233 is posted for others to comment on or further develop. Expanding the definition of
234 Internet access past basic conduit would allow development of even more sophisticated
235 involvement of students in their own education. The use of web tools or applications and
236 software to manage and control traffic is necessary to ensure the fullest use of Internet
237 resources.

238
239 EED would, however, caution the Commission not to change the definition of Internet
240 access so as to encourage vendors to bundle content with Internet access and thereby
241 deprive E-Rate participants of cost-effective choices.

242
243 The E-Rate program should not support Internet access when it is packaged with
244 exclusive content from a particular vendor. This would be an invitation for waste and
245 abuse since it places E-Rate participants in the dilemma of foregoing lowest cost Internet
246 access from a second vendor to obtain necessary and unique content. A definitional
247 change to Internet access that allows bundling of access and content would simply
248 promote the spread of the well-known market inefficiencies of the cable industry to the
249 relatively content-neutral world of ISPs, and would be contrary to the pricing goals and
250 rules of the E-Rate program.

251

252 **E. WIDE AREA NETWORKS**

253 The Commission seeks comment on the provision of funding for the use of dark fiber.
254 Recent decisions based on the changing definitions of fiber as either a
255 telecommunications service or an information service put the applicant and service
256 provider community into a frenzy of misunderstanding and misdirection. Equipment
257 purchased by an applicant with the support of E-Rate several years ago could suddenly no
258 longer be used and decisions made in past years to save districts (and concurrently E-
259 Rate) money turned out to be disastrous for the future. It is hard to agree with the logic
260 that will not allow an applicant to manage its own electronics that can be purchased fairly
261 cheaply and used on even cheaper leased dark fiber to provide bandwidth for a school or
262 library more reasonably than any commercial service available. If there is concern that an
263 applicant will either buy or lease more fiber than is required, shouldn't it be treated the
264 same way as a request for a T5 line when obviously a T1 will do? Cannot PIA ask for
265 justification and treat the fiber technology to the same tests as wired or wireless?

266 **G. OTHER ACTIONS TO REDUCE WASTE, FRAUD, AND ABUSE**

267 30. Cost-Effective Funding Requests

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269 The Commission enquires as to how to codify rules ensuring that applicants make
270 informed and reasonable decisions in seeking services for discounts. If the Commission
271 able to find such a set of rules, it should be widely published to all governmental bodies,
272 to householders and in particular, to teenagers. It seems more likely, however, that a new
273 set of restrictive rules will simply set up an agency as the arbiter of applicants' motives
274 and decisions. Particularly worrisome is the notion that someone should decide whether a
275 particular package of services are the most cost effective means of meeting an applicant's
276 technology needs. On what basis could judgments possibly be made which package of
277 services would best fit an educational need? Educational personnel nationwide cannot
278 agree on the proper method of teaching reading. Is the best method phonics? ...see/say?
279 ...literature? The same is true of every subject in the curriculum. Who could or should
280 possibly make judgments about whether an online application or a stand-alone
281 application is the most effective for the teaching of some particular subject to some
282 particular child? The variables of student body, staff training, community expectations,
283 and previous experience all would have to be considered. That, of course, is what the
284 educational community does when writing a tech plan. Adding subjective evaluation of
285 the judgment of educators as to what is the most "cost effective" way of reaching a
286 technological/educational goal will place an inordinate amount of authority in the hands
287 of non-educators over the process taking place in schools. Those applicants who can
288 afford the most eloquent plan writers will be able to justify their choices. Less verbal
289 applicants will have their choices second-guessed or denied.

290
291 A cost level ceiling for services would add another layer of overweening complexity to
292 this already complex program. How can all of the enormous variety in business practices,
293 location, historical usage, and rapid-fire technological development be organized into a
294 database available for applicant use with any degree of efficiency and fairness? The
295 current Eligible Services List is subject to constant revision, explanation and corrections.
296 A service-by-service cost ceiling listing would be enormously larger and more involved.
297 Dealing with the ESL is one of the most intricate and frustrating parts of the application
298 process. A larger and more involved list would multiply that frustration.

299
300 The other types of ceilings mentioned all evoke the same picture; layer upon layer of
301 exceptions and exclusions with multiple levels of appeals and reconsiderations. The fix
302 may address the current concern of preventing applicants from asking for discounts for
303 services beyond their needs, but at enormous cost of applicant and administrative
304 confusion and additional work.

G. OTHER ACTIONS TO REDUCE WASTE, FRAUD, AND ABUSE

37. Technology Plans

The Commission seeks comment on whether the rules governing technology plans should be revised. The Commission and the Schools and Libraries Division must first decide on the role which they wish to have technology plans play in the entire E-Rate process.

Under the current guidelines, tech plans are referred to as educational plans, but are evaluated as E-Rate purchasing plans. Not only is the amount of detail and specificity required by SLD in reviews normally not present in educational plans, it actually would prevent a tech plan from being approved for other purposes if evaluated without the overlay of E-Rate necessity.

If it is actually desired that the plan function as an educational document, either the timeframes for constructing the plan must be changed, or a much broader and less specific document should be accepted. Schools can make plans for three years into the future, but they cannot do so to the specific degree needed for E-Rate. A committee may conclude that distance delivery of classes would meet their educational goals, but a discussion of leasing versus buying wouldn't need to take place until the actual decision for implementing that service is to be made, which may be 2 to 3 years away. And, in point of fact, the educational value of the service would not be affected either way....and thus would have no place in a truly educational plan. That discussion would be strictly a business decision...or an E-Rate driven decision.

When the program originally required only that a school or library have a tech plan which had been approved for educational purposes by a state or similar agency, the Alaska Department of Education and Early Development developed an omnibus plan rubric which contained the requirements for state and federal programs and the five requirements for E-Rate. This simplified the planning process for our districts and was successful until this year, when SLD adjusted their timelines and requirements. The new amount of specificity required forced almost all of our districts to rewrite or develop addendums to their approved plans which added no new educational elements, although it covered the technical specifics needed for E-Rate. No responsible tech committee should make plans based on whether a technology is eligible for funding, yet this is the result when a requirement that every requested service "including cell phone" must be mentioned in a tech plan. The requirement that plans for 7/2004 to 6/2007 be written by late fall of 2003 forced applicants to do so completely outside the normal state planning calendar and in such a short time as to make the exercise almost totally one of pushing paper.

Since the new emphasis on dates for an E-Rate plan was not made clear to applicants until September of 2003, the stress was, of course, heavier this year than it will be in subsequent years. Just the same, the disconnect between the educational goals and the detail needed to satisfy E-Rate requirements is likely to force us to examine whether if fact we should separate technology planning into two documents again. Add to this the problems faced when the timelines enforced on E-Rate applicants do not match with the

calendars which have been carefully constructed by state departments of education to balance the time available in a school year with the load of requirements on district as well as state personnel. Educators have other jobs to do and other priorities on their time besides meeting the E-Rate requirements. Technology planning has to fit into the yearly cycle of operating a school and a state department of education.

If the Commission actually intends that the tech planning document fill administrative and operational needs of the program, it could easily have a template drawn up to be used nationwide which includes only those items necessary for the program administrator to be able to check off. This could be a quick-to-fill-out document which could be turned in to SLD as an attachment to either the Form 471 or 486. Since it would be strictly a listing of required data, it could easily be checked by PIA personnel as part of the application cycle. If the commission feels obliged to ensure that schools actually have educational purposes for their use of technology, states could supply approval lists of actual educational tech plans which are required by every state, separately from the application process entirely. This would allow SLD to get the information it needs from a tech listing, while allowing the state to set its own requirements and deadlines for a truly educational plan document.

In addition the Commission seeks comment on whether qualifications for those approving tech plans should be strengthened. Approving agencies are, for the most part, operating to assist SLD and their schools and libraries for no compensation and usually without any additional staffing. Because the benefits of the E-Rate program are recognized and appreciated, the agencies are willing to accept this added burden into their already full-time professional duties. Whatever type of qualifications are added or changed for these agencies need to be carefully measured. If they will increase the load of work already done without recompense, many agencies may decide to forego the burden and allow the SLD to find some other way of having plans approved.

G. OTHER ACTIONS TO REDUCE WASTE, FRAUD, AND ABUSE

37. Use of Surveys to Determine School Lunch Eligibility

The Commission asks for responses on codifying a return rate on income surveys used to establish income levels for eligibility status. Codifying a return level won't help either the program or the applicants. Surveys are considered the most onerous part of the application process by school districts in Alaska. Our situation is perhaps more tedious because we have a large proportion of schools which do not have the National School Lunch Program; we have a large number of villages where English is not the first language and illiteracy among adults is rampant; and because there is a long "last frontier" tradition of not trusting any governmental agency that wants to know how much you make.

Our return reply rates, despite fervent and frequently innovative methods for encouraging participation, are very low. However, we do not advocate lowering the response rate needed to interpolate the reply percentages onto the entire enrollment. Lowering the response reply rate simply would result in lowering the discount levels because of the immutable fact that families with the highest incomes, most involved in their children's education and with highest family education levels, will respond first to any surveying request. This is not connected to E-Rate. The same response pattern applies to requests for overdue library books, egg cartons for kindergarten projects or any other messages sent home. However, for E-Rate surveys, this implies that the first responses will generate a lower eligibility percentage than waiting for late responders.

Moreover, so long as SLD is willing to rely on surveying to gather poverty data, the data must always be considered suspect. Surveying methods vary from location to location. There are statistical anomalies introduced into the eligibility data every time a survey is drawn up. Whether or not the survey gets an answer depends on weather, the community's relationship with the school or with the survey taker, the timing of the survey, and a multitude of other factors. Something should be done to take this process out of district hands and use statistics that are uniform across the country.

The Department of Agriculture is very frank in telling other governmental programs not to rely on NSLP data for their own uses. If the entire discount percentage mechanism could be based on a nationally available poverty information database, both applicants and the administrator would save enormous amounts of effort. Currently, each piece of eligibility data, school by individual school, must be individually verified by SLD personnel. The least time and effort consuming segment of this operation involves comparing numbers on the application with numbers on NSLP tables published by individual states. Where tables are not available, or numbers do not match, action to determine why has to be taken. This normally involves contact(s) with applicants, state departments of education and state E-Rate coordinators. If the application data is survey-derived rather than NSLP reporting, this verification gets even more stringent. It would be very revealing to determine from the program Administrator exactly how much staff time and resources are involved in checking figures.

423
424 If this poverty data were derived from a national database and fed into the E-Rate
425 database as an entry on an application form, it would save both the Administrator and the
426 applicants enormous time and frustration. This would obviously be more fair than relying
427 on multiple methods of disparate survey documents. Streamlining can be accomplished
428 by relying on already gathered poverty level data which is available for every community
429 and doesn't involve additional surveying by applicants or verifying by SLD personnel.
430

431 **SUMMARY**

432 The Alaska EED should be viewed as an enthusiastic supporter of the E-Rate program.
433 At every opportunity, we detail the wonderful results of the funding which has reached
434 our schools and libraries. We tell our legislators, both state and federal, that the program
435 is a success and deserves support and backing. Nonetheless, like any institution, E-Rate
436 can be improved. The Commission, with Orders and NPRMs, obviously wishes to
437 manage the program to the best results possible.

438
439 In our comments to this NPRM, just as in comments and replies to earlier requests, we try
440 to emphasize that the most important improvements to the program will come from
441 making the application and funding more simple and less cumbersome. The recent
442 emphasis in program changes and new regulation has been placed on preventing waste,
443 fraud and abuse. It is our contention that simplifying participation in the program will do
444 exactly that. Much of the waste, fraud and abuse can be traced to rules that lend
445 themselves to multiple interpretations, lists that contain convoluted descriptions which do
446 not fit precisely an applicant's need, and hard-to-understand sets of documents describing
447 amazingly involved sets of deadlines and requirements. Such a climate naturally leads
448 applicants who are quite aware that minuscule mistakes lead to horrendous consequences
449 to turn to consultants and vendors. If the application process is made simple, it will be
450 simple for applicants to ask for what they should have rather than get involved in more
451 elaborate schemes.

452
453 EED stands ready to aid in the Commission's goals to improve the program in whatever
454 way possible.

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458 Respectfully submitted,

459 Roger Sampson, Commissioner
460 Alaska Department of Education and Early Development

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